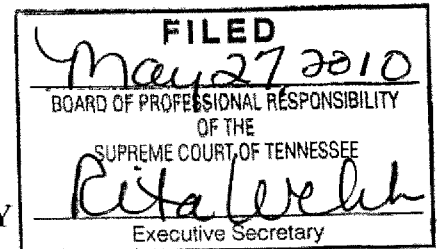


**IN THE DISCIPLINARY DISTRICT V
OF THE
BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE**



**In Re: ALEA DANIELLE ASHBY
BPR #24069, Respondent
An Attorney Licensed to
Practice Law in Tennessee
(Davidson County)**

Docket No. 2009-1838-5-KH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before a duly appointed Hearing Panel on May 18, 2010 upon a Petition for Discipline filed August 24, 2009 by the Board of Professional Responsibility ("Board") against Alea Danielle Ashby, Respondent; upon an Order of Default entered on December 8, 2009; upon a Supplemental Petition for Discipline filed on November 18, 2009; upon an Order of Default relative to the Supplemental Petition entered on January 27, 2010; upon a Second Supplemental Petition for Discipline filed on January 13, 2010; upon testimony of witnesses; upon statements of counsel; evidence presented; and upon the entire record in this cause. Pursuant to Tennessee Supreme Court Rule 9, Section 8, the Hearing Panel makes the following findings of fact and conclusions of law.

STATEMENT OF THE CASE

The Respondent was licensed to practice in 2005. Her current address is registered with the Board as 509 Achievement Drive, Nashville, TN, 37209-2818.

The Board filed a Petition for Discipline on August 24, 2009. The Petition was sent via certified mail and return receipt was signed on August 25, 2009. Respondent did not file an answer to the Petition; therefore, the Board filed a Motion for Default Judgment and that

Allegations Contained Within the Petition Be Deemed Admitted on October 27, 2009. Respondent did not file a response to the Board's Motion. An Order of Default was entered on December 8, 2009.

On November 18, 2009, the Board filed a Supplemental Petition for Discipline. The Supplemental Petition was sent via certified mail and return receipt was returned unclaimed. Again, Respondent failed to file an answer. On January 8, 2010, the Board filed a Motion for Default Judgment and that Allegations Contained Within the Petition Be Deemed Admitted in relation to the Supplemental Petition for Discipline. An Order of Default was entered on January 27, 2010.

The Board filed a Second Supplemental Petition for Discipline on January 13, 2010. The Petition was sent via certified mail and returned "unclaimed" on March 4, 2010. Respondent has not filed an answer to the Second Supplemental Petition for Discipline.

The Respondent was temporarily suspended on August 4, 2009 pursuant to Tennessee Supreme Court Rule 9, Section 4.3, for failure to respond to disciplinary complaints. Respondent filed a petition to dissolve the temporary suspension; however, it was dismissed due to her failure to appear for the hearing. (Collective Exhibit E)

Further, the Respondent did not appear for this disciplinary hearing or offer any defense to the allegations.

FINDINGS OF FACT

The allegations in the Petition for Discipline and Supplemental Petition for Discipline have been deemed admitted due to the Respondent's failure to answer. Those facts are incorporated herein and the Panel's conclusions are based fully on each allegation deemed admitted. The Panel heard testimony relative to the complaints contained within the Second

Supplemental Petition for Discipline.

1. FILE NO. 31492c-5-DB - Complaint by Jacqueline Frazier

On July 28, 2008, Complainant Jacqueline Frazier sent a complaint to the Consumer Assistance Program of Board of Professional Responsibility alleging ethical misconduct by Respondent. Respondent responded to this complaint approximately six (6) months after it was filed with the Board and following several notices of temporary suspension. Ms. Frazier paid the Respondent \$960.00 to represent her in a divorce case. Respondent did not return Ms. Frazier's telephone calls for many months and performed no work on the case. Finally, on August 3, 2007, Ms. Frazier was able to meet with the Respondent, and the Respondent apologized and indicated that she understood that Ms. Frazier was upset with the lack of work that she had done on the case. Not long after this meeting, Ms. Frazier and the Respondent met at the courthouse, and the Respondent filed some papers pertaining to the divorce. Ms. Frazier waited about three (3) more months and heard nothing from the Respondent until January of 2008, when the Respondent informed her that a hearing was coming up and that Ms. Frazier needed to get her witnesses ready, as a court date would follow shortly. Ms. Frazier did not hear from the Respondent again until late July of 2008, when Ms. Frazier filed the complaint. Respondent moved her office twice and lost Ms. Frazier's file. In her letter dated December 17, 2008, the Respondent stated that she would work to finalize Ms. Frazier's divorce, but the Respondent has taken no action.

2. FILE NO. 32065-5-PS – Complaint by Deborah Elaine Turner

On April 9, 2009, Complainant Deborah Elaine Turner sent a complaint to the Consumer Assistance Program of Board of Professional Responsibility alleging ethical misconduct by Respondent. On April 17, 2009, Disciplinary Counsel sent a copy of the complaint and a request

for a response in a letter to Respondent. On April 29, 2009, Disciplinary Counsel sent a Notice of Temporary Suspension to the Respondent. After receiving no response, a Petition for Temporary Suspension was filed with the Supreme Court on August 3, 2009.

On August 4, 2009, the Supreme Court entered an Order temporarily suspending the Respondent. Ms. Turner retained the Respondent on January 20, 2009, and paid \$1,500.00 in legal fees. Ms. Turner hired the Respondent to help her try to regain custody of her daughter. Respondent informed Ms. Turner that they would begin by going to court to establish visitation and modify the child support order that had never been enforced. For a month, Ms. Turner tried calling and emailing the Respondent, but the Respondent did not return her calls or emails. Respondent finally emailed Ms. Turner to report that a family member had been sick and she had been out of town. However, the Respondent assured Ms. Turner that she had filed the petition. Later, Ms. Turner again tried to contact the Respondent to get information about the case. Once again, however, Ms. Turner was unable to get in touch with the Respondent. Ms. Turner called the court clerk, who reported that the Respondent had not filed any petitions or motions in the case.

3. FILE NO. 32074c-5-PS – Complaint by Richard Primm

On March 4, 2009, Complainant Richard Primm sent a complaint to the Consumer Assistance Program of Board of Professional Responsibility alleging ethical misconduct by Respondent. On April 17, 2009, Disciplinary Counsel sent a copy of the complaint and a request for a response in a letter to Respondent. On April 29, 2009, Disciplinary Counsel sent a Notice of Temporary Suspension to the Respondent. On August 4, 2009, the Supreme Court entered an Order of Temporary Suspension upon her failure to respond to this complaint.

Mr. Primm retained the Respondent to represent him in a divorce case. He paid \$2500.00

in legal fees. The Respondent did not keep Mr. Primm informed regarding the status of the case and did not return Mr. Primm's telephone calls. The Respondent filed the divorce complaint on December 18, 2008, but did no work on the case from that point forward. On April 20, 2009, Mr. Primm met Respondent at her office. Respondent told Mr. Primm that she had a death in the family which prevented her from responding to him. Mr. Primm terminated the representation and requested a refund. Respondent never provided a refund of the fees.

4. FILE NO. 32215-5-PS – Complaint by Darrell Bell

On June 2, 2009, the Board of Professional Responsibility received a complaint from Darrell Bell alleging ethical misconduct by Respondent. On June 3, 2009, Disciplinary Counsel sent a copy of the complaint and a request for a response in a letter to Respondent. On June 26, 2009, after receiving no response from Respondent, Disciplinary Counsel sent Respondent a Notice of Temporary Suspension. On August 4, 2009, the Supreme Court entered an Order of Temporary Suspension upon her failure to respond to this complaint.

Mr. Bell retained Respondent on December 12, 2008 to represent him in a post-divorce matter. He paid \$1,500.00 in legal fees to Respondent. Respondent filed a petition to reduce alimony but failed to take any further action. Mr. Bell's ex-wife was served with the pleading on the last week of February 2009. Mr. Bell made repeated attempts to contact Respondent to no avail. Finally, Mr. Bell's wife emailed Respondent after two weeks of trying to contact her by phone. On April 30, 2009, Respondent replied that she would file a motion for default. Mr. Bell never heard from Respondent again. On April 23, 2009, Mr. Bell sent a certified letter to Respondent expressing concern about her failure to communicate with him. After three attempts, the mail was returned unclaimed.

5. FILE NO. 32420-5-PS – Complaint by Samantha Floyd

On August 17, 2009, the Board of Professional Responsibility received a complaint from Samantha Floyd alleging ethical misconduct by Respondent. On August 21, 2009, Disciplinary Counsel sent a copy of the complaint and a request for a response in a letter to Respondent. Respondent never provided a response to the complaint.

Ms. Floyd hired Respondent to handle her divorce case. Upon hiring Respondent, Ms. Floyd paid Respondent \$700.00 as an initial payment towards a total retainer of \$2,500.00. Respondent agreed to allow Ms. Floyd to pay \$150.00 every two (2) weeks until the balance of the retainer had been paid. In accordance with the payment agreement, Ms. Floyd made payments every two (2) weeks until the retainer was paid in full. Throughout the course of making her payments, Ms. Floyd tried to contact Respondent with no success. On May 11, 2009, Ms. Floyd sent a letter to Respondent regarding the lack of communication and to verify that her retainer had been paid in full. Respondent never responded to this letter. Ms. Floyd tried contacting Respondent for seven (7) or eight (8) months with no reply to date.

6. FILE NO. 32535-5-PS – Complaint by Sarah Brasel

On October 2, 2009, the Board of Professional Responsibility received a complaint from Sarah Brasel alleging ethical misconduct by Respondent. (Exhibit A) Respondent did not provide a response to the disciplinary complaint.

Ms. Brasel hired the Respondent on July 8, 2009, paying a \$1,500 retainer fee. On August 4, 2009, Ms. Brasel learned that the Respondent had been temporarily suspended from the practice of law. Ms. Brasel attempted to contact the Respondent by fax, e-mail, telephone, and letters to ascertain the status of her case and the Respondent's status as an attorney.

Respondent contacted Ms. Brasel by e-mail on August 21, 2009 stating that she was “clearing up” the suspension and that she would be able to attend the court hearing set for November, 2009. (Collective Exhibit A) Further, Respondent told Ms. Brasel that she would continue representing her. When Ms. Brasel learned that Respondent remained on suspension, she requested a refund of her fee. Despite several efforts to contact Respondent, Ms. Brasel never received further communication from Respondent. Respondent failed to return Ms. Brasel’s file despite Ms. Brasel’s request for it. Ms. Brasel testified that she suffered a great deal of anxiety due to Respondent’s failure to communicate with her about either the status of her case or the Respondent’s own status as a licensed attorney.

Ms. Brasel testified that just prior to the November 2009 court date, Respondent called to inquire whether or not she would be representing Ms. Brasel at the hearing.

7. FILE NO. 32644c-5-PS – Complaint by Letcher Miles

On September 30, 2009, Complainant Letcher Miles sent a complaint to the Consumer Assistance Program of Board of Professional Responsibility alleging ethical misconduct by Respondent. Respondent never responded to the disciplinary complaint.

Mr. Miles hired the Respondent in a divorce/child custody case in late 2008, paying a \$500 retainer fee and an additional \$600 in March of 2009. On July 17, 2009, the Respondent suggested filing an Order of Protection against Mr. Miles’ ex-wife and informed Mr. Miles that a payment was due. According to Mr. Miles, Respondent was insistent that he pay more money. Mr. Miles testified that Respondent had not filed any pleadings on his behalf.

Thereafter, Mr. Miles attempted to contact the Respondent for weeks, but was unable to do so. On September 11, 2009, when Mr. Miles picked up his children, he learned he had missed a September 9, 2009, hearing. He attempted to contact Respondent on September 14, 2009, but

was unable to reach her. As a result, Mr. Miles was unable to gain custody of his children, lost more of his existing visitation rights, and lost his rights to make decisions regarding his children. He was also ordered to pay \$12,410.65 for his ex-wife's legal fees.

After the September 11, 2009 hearing, Mr. Miles learned that Respondent was suspended from the practice of law. Respondent did not respond to his attempts to contact her following the September 11, 2009 hearing. Mr. Miles approached the court pro se to request that the judgment of September 9, 2009 be set aside due to his attorney's failure to notify him of the court date. He was forced to retain new counsel to pursue a final resolution of the case.

8. FILE NO. 32662-5-KH – Informant Richard Wommack, II., Esquire

On November 20, 2009, Richard Wommack, III, Esq. sent the Board of Professional Responsibility an affidavit alleging ethical misconduct by Respondent. (Exhibit I) Respondent never responded to the disciplinary complaint.

Mr. Wommack is an attorney in Davidson County, Tennessee. On November 16, 2009, he appeared in the Fourth Circuit Court of Davidson County at Nashville, Tennessee, to represent a client on a motion to set aside an order. Prior to the hearing, Mr. Wommack was addressed by Respondent who stated, in substance, that she "had only been contacted the previous Friday" by the pro se litigant opposing Mr. Wommack's motion. Respondent further stated that she "had been out of town with a dying relative all weekend" and, generally, that because of these circumstances, she was unprepared to proceed with the hearing of the matter. Mr. Wommack and his client agreed to a one-week continuance.

Respondent and Mr. Wommack approached the Court and announced their agreement to a continuance, subject to the Court's approval. After granting the continuance, the Court asked Respondent and Mr. Wommack to approach the bench. The Court inquired into the status of

Respondent's license to practice law.

Respondent led the Court and Mr. Wommack to believe that her license had been reinstated as of that time, or that she had reason to believe it soon would be. The Court ordered Respondent to call Mr. Wommack to inform him of the exact status of her license on or before 4:30 p.m., November 19, 2009. Respondent never communicated with Mr. Wommack. As of the date of these events, Respondent remained on temporary suspension and was not authorized to practice law in any manner whatsoever.

9. FILE NO. 32713-5-PS – Complaint by Samuel Osborne

On December 17, 2009, the Board of Professional Responsibility received a complaint from Samuel Osborne alleging ethical misconduct by Respondent. Respondent did not file a response to the disciplinary complaint.

Mr. Osborne hired the Respondent in a child custody case in May 2009. He paid Respondent a \$400 retainer fee by check which Respondent cashed the same day. Since their initial consultation, Mr. Osborne has been unable to contact Respondent despite numerous attempts. It was his understanding that Respondent would be filing pleadings on his behalf within two (2) weeks of being hired. Respondent did no work on Mr. Osborne's case. Further, Respondent has not initiated any communication with Mr. Osborne since the day she cashed his check.

10. FILE NO. 32723-5-KH – Informant Linda Walls, Esquire

On December 18, 2009, the Board of Professional Responsibility received information from Assistant District Attorney Linda Walls regarding potential ethical misconduct by Respondent. Respondent did not file a response to the disciplinary complaint.

Ms. Walls is an Assistant District Attorney in Lebanon, Tennessee. She prosecuted a

case in Wilson County Criminal Court, Division II, State of Tennessee v. Patrick M. Nash, docket no. 08-0263, in which Respondent represented the defendant.

Respondent improperly communicated with Ms. Walls about the case after her temporary suspension. (Collective Exhibit O) Respondent e-mailed Ms. Walls on September 9, 2009 regarding a continuance. Respondent called Ms. Walls on December 11, 2009 and again on December 15, 2009. On December 9th or 10th, 2009, Ms. Walls discovered, through the Board of Professional Responsibility's website, that Respondent's license had been temporarily suspended on August 4, 2009. On December 15, 2009, Ms. Walls confronted Respondent about her suspension. After being confronted about her suspension, Respondent failed to appear in court and no further contact has been made with her.

At no time during the term of her suspension did Respondent inform Ms. Walls or the Court that she was temporarily suspended from the practice of law. Ms. Walls testified that Respondent's actions had an adverse effect on the case in that it caused a significant delay.

CONCLUSIONS OF LAW

Pursuant to Tenn. S. Ct. R. 9, Section 3, the license to practice law in this state is a privilege and it is the duty of every recipient of that privilege to conduct himself at all times in conformity with the standards imposed upon members of the bar as conditions for the privilege to practice law. Acts or omissions by an attorney which violate the Rules of Professional Conduct (hereinafter "RPC") of the State of Tennessee shall constitute misconduct and be grounds for discipline.

As noted above, Respondent has failed to answer the Petition for Discipline and the Supplemental Petition for Discipline. The Hearing Panel has already entered Orders of Default

and, therefore, pursuant to Tenn. S. Ct. R. 9, Section 8.2 the charges are deemed admitted. Further, the Panel finds that the Board has demonstrated ethical misconduct by Respondent as alleged in the Second Supplemental Petition by a preponderance of the evidence.

Violations of Duties Owed to Clients

All of the complaints in the Petition for Discipline and Supplemental Petition for Discipline demonstrate violations of RPCs 1.3, Diligence, and 1.4, Communication. The complaints in the Supplemental Petition for Discipline also demonstrate a violation of RPC 1.5, Fees. The Osborne, Miles, and Brasel complaints in the Second Supplemental Petition for Discipline demonstrate violations of RPCs 1.3, Diligence; 1.4, Communication; and 1.5, Fees, as well.

The Respondent's pattern of neglect and failure to communicate is pervasive. In the Turner, Primm, Floyd, Bell, Miles, Osborne, and Frazier cases, Respondent failed to take diligent action on their respective cases long before her temporary suspension. However, while Respondent failed to meet her obligations to her clients prior to her temporary suspension, her failure to properly communicate her status to her clients after the suspension exacerbated the problem. Respondent's lack of communication and failure to properly comply with Tenn. S. Ct. Rule 9, Section 18, resulted in an abandonment of practice and caused serious injury to her clients. Several of the witnesses testified that Respondent's offices were closed, that her voice mail was constantly full, and that letters went unanswered. In all of these cases, Respondent's misconduct could have resulted in potential serious injury. However, in several of these complaints, the injury to clients is obvious and Respondent's misconduct has had a direct and serious impact on their cases.

In the Frazier, Turner, Primm, Bell, Floyd, Brasel and Osborne cases, Respondent did little or no work despite accepting fees from these clients, thus violating RPC 1.5. Her actions demonstrate that Respondent misappropriated the fees because the clients received minimal services, if any, before she abandoned her practice. Her failure to refund fees despite the request of several clients also demonstrates that she has injured these clients who must retain new legal counsel without the benefit of the refunded money.

ABA Standards 4.11, 4.41, 4.51, 4.61, and 7.1 apply to the violations of diligence, neglect, and lack of communication in this case.

Misrepresentation to Clients, Opposing Counsel, and the Courts

RPC 8.4(c) states that it is a violation for the lawyer to “engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” As the facts demonstrate, Respondent engaged in dishonesty both directly and by omission by misrepresenting herself as an attorney in good standing.

Respondent lied to Ms. Turner by telling her that a petition to modify child support had been filed. Respondent told Mr. Bell that she would file a motion for default and then failed to do so. Respondent lied to Ms. Brasel when she was confronted about her suspension from the practice of law. Further, Respondent lied to Mr. Wommack and the Court on November 16, 2009 by representing that she was no longer suspended. She failed to follow-up with Mr. Wommack as directed by the Court to confirm her status to practice law. Presumably, her failure was due to the fact that she was, and remains, suspended.

Respondent has violated RPCs 3.3(a), Candor Toward the Tribunal; 3.4(c), Fairness to Opposing Party and Counsel; 5.5, Unauthorized Practice of Law and 8.4(a)(c)(d)(g), Misconduct. ABA Standards 4.61, 5.11, 6.11 and 7.1 apply to Respondent’s misconduct.

Failure to Respond to Disciplinary Complaints

Respondent's failure to respond to the Turner and Primm complaints led to her temporary suspension on August 4, 2009. Respondent also failed to respond to the Bell, Floyd, Brassel, Miles, Womack, Osborne, and Walls complaints. Respondent's failure to respond is a violation of RPC 8.1. While it is arguable that ABA Standard 7.2 applies, the aggravating factors set forth below justify an increase in the degree of discipline.

Aggravating and Mitigating Factors

The Panel finds that there are no mitigating factors in this case. Further, the Panel notes that this is an egregious case of misconduct. The Panel finds that the following aggravating factors are present:

- a) dishonest or selfish motives;
- b) a pattern of misconduct;
- c) multiple offenses;
- d) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- e) refusal to acknowledge wrongful nature of conduct;
- f) vulnerability of the victims; and
- g) indifference to making restitution.

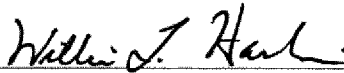
JUDGMENT

Based upon the foregoing, it is the judgment of this Hearing Panel that Alea Danielle Ashby is hereby disbarred from the practice of law. The Hearing Panel further finds that Alea Danielle Ashby should make restitution in the following amounts:


- a) Jacqueline Frazier - \$960.00
- b) Deborah Elaine Turner - \$1,500.00
- c) Richard Primm - \$2,500.00
- d) Darrell Bell - \$1,500.00
- e) Samantha Floyd - \$2,500.00
- f) Sarah Brassell - \$1,500.00
- g) Letcher Miles - \$1,100.00
- h) Samuel Osboraray - \$400.00

Payment of restitution and the Board's costs shall be a condition precedent to reinstatement. Further, in light of the disposition of this disciplinary proceeding, the Hearing Panel recommends that the temporary suspension pursuant to Section 4.3 of Supreme Court Rule 9 be dissolved upon entry of the Order of Enforcement.

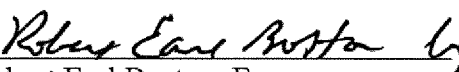
IT IS SO ORDERED.



William L. Harbison, Esq.
Panel Chair

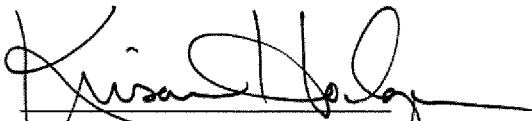


Peter John Strianse, Esq.
Panel Member



Robert Earl Boston, Esq.
Panel Member

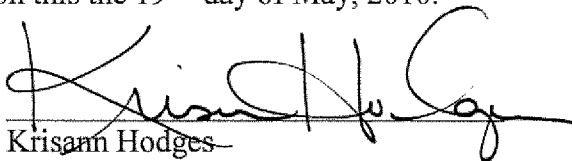
PREPARED BY:



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615-361-7500

Certificate of Service

I certify that a copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW has been mailed to Respondent, ALEA DANIELLE ASHBY, at 509 Achievement Drive, Nashville, TN, 37209-2818 by regular mail on this the 19TH day of May, 2010.



Krisann Hodges
Disciplinary Counsel